

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

JUMIO CORP.,
Petitioner

v.

FACETEC, INC.,
Patent Owner

Case IPR2025-00108
U.S. Patent No. 11,693,938

PATENT OWNER'S MOTION TO STRIKE

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I. Jumio's New Arguments Should be Stricken

As authorized by the Board, FaceTec moves to strike the new arguments in Jumio's Reply (Papers 52/54) and Reply Declaration (EX1060). Given that Jumio's response to this motion is not due until the day of the hearing,¹ FaceTec also moves to strike Jumio's reliance on the identified arguments at the hearing or in Jumio's demonstratives.

II. Petitioner Introduces New Arguments Based on Derakhshani

A. "Spoofing" Photograph – New Embodiment

In its Reply and Dr. Daft's Declaration, Jumio argues for the first time that the "spoofing" photograph at 17:16-19 of Derakhshani teaches an image of a user "having multiple landmarks." Reply, 1; EX1060, ¶150. Jumio never relied upon this "spoofing" photograph to teach the claimed "three-dimensionality of the user" nor to teach capturing a face of a user, waiting until its final paper to argue this. *Id.*

Jumio repeatedly relies on this portion, arguing that it teaches capturing "the face" (Reply, 1) and "non-eye landmarks" (*id.*, 2), arguing that capturing a face is a "disclosed embodiment" not in the figures (*id.*, 2), that "landmarks" exist in a two-

¹ FaceTec attempted to meet and confer to adopt a briefing schedule that would give the Board time to review this Motion and any opposition before the hearing. Jumio refused.

dimensional spoofing photograph (*id.*, 8), that photographic landmarks teach “biometric data” (*id.*, 4), and that “landmarks” exist in a two-dimensional spoofing photograph (*id.*, 8). Jumio’s expert also uses this portion for similar reasons, all of which are new arguments. Ex. 1060, ¶¶150, 153-155, 158, 162, 171, 174. The Board should strike these new arguments. “Petitioner may not submit new evidence or argument in reply that it could have presented earlier, e.g. to make out a prima facie case of unpatentability.” Consolidated Trial Practice Guide (“CTPG”), 73.

B. “Spoofing” Photograph – New Obviousness Position

Jumio’s Reply uses the “spoofing” photograph to argue that an image with multiple landmarks is of a head/face. For example: “It would be obvious for an image having multiple ‘landmarks...’ to be of the head/face” (Reply, 1), “the further-away image...captures the eye, nose, mouth, and ear—*i.e.*, the face” (*id.*, 2) and “FaceTec...ignores other disclosures of capturing images of non-eye landmarks” (*id.*, 2). *See also* EX1060, ¶¶150, 155, 158. In addition to never even citing 17:16-19, Jumio’s Petition never argued that *any* image with these elements “*obvious[ly]*” constitutes a face.

Jumio’s new argument takes a new direction in response to unfavorable testimony that Derakhshani never captures such an image. EX1059, 137:4-11 (“I don't think Derakhshani ever says that it will capture images that include all of

those.”). The Board should strike Jumio’s new arguments. *See* CTPG, 74 (“Respond ... does not mean proceed in a new direction with a new approach....”).

C. “Close-Up” and “Further-Away” Images – New Embodiment

Jumio’s Reply also asserts for the first time that Derakhshani teaches capturing multiple images – a “close-up image” with vasculature and a “further-away image” without. Reply, 2, 3, 4; EX1060, ¶¶13, 153-54, 156-57, 159, 171. Jumio did not discuss “further-away images” without vasculature or with “blurred” vasculature (Reply, 2, 4) anywhere in its Petition, nor that it would teach the claims. Indeed, neither the Petition nor Dr. Daft’s first declaration (EX1003) even *mention* “vasculature.” The Board should strike this argument and Daft’s testimony.

III. Petitioner Introduces New Arguments Based on Zhang

A. Zhang in View of Derakhshani – New Obviousness Positions

In *Haag-Streit AG v. Eidolon Optical, LLC*, IPR2018-01311 (P.T.A.B, Sept. 5, 2019), the Board struck portions of a petitioner’s reply and testimony citing a new reference for the “state of the prior art.” Paper 31, 13. The new reference was improperly used to “gap-fill” the Petition and “set forth new positions.” *Id.*, 6.

Jumio does the same, relying on a portion of Derakhshani to try to fix its Zhang grounds. Reply, 10; EX1060, ¶178. The Petition does not rely on

Derakhshani in the Zhang grounds at all. Pet. 46-78. And the cited portion of Derakhshani, 19:30-37, was never mentioned anywhere in the Petition.

Like in *Haag-Streit*, Jumio does not just rely on this for the “state of the prior art” but for a new allegation of what a POSITA would understand Zhang’s “live face” would exhibit. Jumio also outlines what appears to be a *second* new obviousness position, by relating Zhang’s “live face” to Derakhshani’s “live eye.” Reply, 10.

Relying on an unrelated portion of a primary reference to support a position of a different primary reference is precisely the “gap-fill[ing]” that the Board’s rules prohibit. CTPG, 74-75.

IV. Conclusion

FaceTec respectfully requests that the Board strike the above-mentioned portions of Jumio’s Reply and Dr. Daft’s declaration.

Date: March 3, 2026

Respectfully submitted,

/Joshua L. Goldberg/

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CERTIFICATE OF SERVICE

Pursuant to 37 C.F.R. § 42.6(e), the undersigned certifies that the foregoing
PATENT OWNER'S MOTION TO STRIKE was served on March 3, 2026, via
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